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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

vs.

META PLATFORMS, INC.,

Defendant.

This Document Relates To: All Actions

Consolidated Case No. 3:20-cv-08570-JD

**JOINT STIPULATION BETWEEN
CONSUMER PLAINTIFFS AND
DEFENDANT META PLATFORMS, INC.
REGARDING PENDING DISCOVERY
DISPUTES AS TO "ONLINE SERVICES"
AND INTERROGATORIES**

The Hon. James Donato

JOINT STIPULATION

WHEREAS, Defendant Meta Platforms, Inc. (“Meta”) served its first set of requests for production of documents to Consumer Plaintiffs Maximilian Klein, Sarah Grabert, and Rachel Banks Kupcho (“Consumer Plaintiffs”) on August 25, 2021;

WHEREAS, Meta’s first set of requests for production of documents to Consumer Plaintiffs seeks discovery regarding “online services,” which the requests define as “any public-facing internet website, web application, digital application or other service provided online in any form or by any method, including but not limited to email or messaging services, and any news, ecommerce, entertainment, streaming video, streaming audio, television, or gaming services, applications, or websites”;

WHEREAS, Consumer Plaintiffs served their responses and objections to Meta’s first set of requests for production of documents on September 24, 2021;

WHEREAS, Consumer Plaintiffs’ responses and objections to Meta’s first set of requests for production of documents specifically objected to Meta’s definition of “online services”;

WHEREAS, Consumer Plaintiffs on December 17, 2021 identified having maintained accounts on the following 32 online services:

<u>December 17, 2021 Online Services</u>			
Amazon Family of Services	Google Family of Services	Overstock	Target
Apple Family of Services	HBO Max	Pandora	The Gap Family of Retailers
CNN	Hulu	Peacock	TikTok
Comcast	Instacart	Pinterest	Twitter
Discord	Instagram	Signal	Walmart
Disney+	Like to Know It	Skype	Washington Post
ESPN	LinkedIn	Snapchat	Wayfair
Facebook	Moment Garden	Spotify	WhatsApp

1 (“December 17, 2021 Online Services”);

2 WHEREAS, Consumer Plaintiffs have produced responsive documents concerning the
3 December 17, 2021 Online Services in response to Meta’s first set of document requests to
4 Consumer Plaintiffs;

5 WHEREAS, Meta propounded its first sets of interrogatories to Consumer Plaintiffs and
6 Advertiser Plaintiffs on January 7, 2022, seeking, as to Consumer Plaintiffs only, information
7 regarding Consumer Plaintiffs’ use of and privacy settings on “online services” (based on the same
8 definition of “online services” as contained in Meta’s first set of document requests to Consumer
9 Plaintiffs, to which Consumer Plaintiffs objected);

10 WHEREAS, Consumer Plaintiffs served their objections to Meta’s first set of interrogatories
11 on February 7, 2022;

12 WHEREAS, Consumer Plaintiffs’ objections to Meta’s first set of interrogatories
13 specifically objected to Meta’s definition of “online services”;

14 WHEREAS, Meta on February 23, 2022, filed a discovery letter brief requesting that the
15 Court compel Consumer Plaintiffs to provide responses to certain of Meta’s first set of
16 interrogatories (Dkt. 230);

17 WHEREAS, Meta subpoenaed certain nonparty online services on February 23 and March
18 3, 2022, and those subpoenas contain certain document requests regarding Consumer Plaintiffs’
19 purported use of and privacy settings on those online services;

20 WHEREAS, Consumer Plaintiffs on March 10, 2022, served objections to Meta’s February
21 23 and March 3, 2022 nonparty online services subpoenas;

22 WHEREAS, Consumer Plaintiffs on March 10, 2022, filed a discovery letter brief seeking
23 to quash or modify certain of Meta’s nonparty subpoenas to online services which sought from those
24 nonparties documents and information regarding Consumer Plaintiffs (Dkt. 249);

25 WHEREAS, Meta on March 14, 2022, filed a discovery letter brief requesting that the Court
26 compel Consumer Plaintiffs to produce documents regarding online services beyond those that
27 comprise the December 17, 2021 Online Services (Dkt. 254);

28

1 WHEREAS, Consumer Plaintiffs opposed Meta's document request and interrogatory letter
2 briefs and Meta opposed Consumer Plaintiffs' nonparty subpoena letter brief (Dkts. 259, 267, 269);

3 WHEREAS, the Court on March 23, 2022, ordered the parties' lead counsel to meet-and-
4 confer by April 8, 2022, for four hours regarding the parties' interrogatories dispute;

5 WHEREAS, lead counsel for the parties met-and-conferred for more than four hours on
6 April 8, 2022, on the parties' pending disputes regarding Meta's document requests, interrogatories,
7 and nonparty subpoenas as to Consumer Plaintiffs' use of and privacy settings on "online services";

8 WHEREAS, the parties further met-and-conferred on April 14, 2022, on these pending
9 disputes;

10 ACCORDINGLY, Consumer Plaintiffs and Meta, by and through their respective counsel,
11 hereby stipulate and agree as follows:

12 1. Consumer Plaintiffs agree that Consumer Plaintiffs will conduct a reasonable search
13 for battery reports, screen time reports, and documents showing privacy settings for accounts
14 maintained by Consumer Plaintiffs, if any, for the following 67 online services (which are in
15 addition to the 32 December 17, 2021 Online Services listed above):

<u>April 15, 2022 Additional Online Services</u>			
Aloha	FrontPorchForum	Nintendo	Stir
ATT.com (DirecTV Streaming)	Fy!	Outlook	Telegram
BingRewards	Groupon	Paramount Plus	Triller
Bumble	Haiku	Peacock	Tumblr
Cash App	Houseparty	Picsart	Untappd
Clubhouse	Ibotta	Pic Stitch	Venmo
Costco	IMDb	PlayStation	Viber
Craigslist	Macy's	Poshmark	Vimeo
Discovery Plus	Marco Polo	PotteryBarn	Webull
eBay	Michaels	Quora	WeChat

<u>April 15, 2022 Additional Online Services</u>			
Electronic Arts	Medium	Reddit	Wordle
Etsy	Microsoft, including but not limited to Bing and Xbox	Robinhood	Wyze
E*Trade	Myspace	SeekingAlpha	Yahoo
Facebook Messenger	NBC Sports	SHEIN	Yelp
FanDuel	Netflix	Shutterfly	Zacks.com
Flickr	Newsweek	Starz	Zoom
Friendster	Nextdoor	Steam	

(“April 15, 2022 Additional Online Services”). Consumer Plaintiffs further agree to produce this information—to the extent reasonably accessible—no later than June 15, 2022. To the extent Consumer Plaintiffs assert that documents regarding the April 15, 2022 Additional Online Services are not reasonably accessible, Consumer Plaintiffs further agree to explain the basis for that assertion in good faith and upon reasonable inquiry. For the avoidance of doubt, Meta agrees not to seek from Consumer Plaintiffs any documents beyond battery reports, screen time reports, and documents showing privacy settings regarding Consumer Plaintiffs for any of the April 15, 2022 Additional Online Services, aside from Microsoft Outlook (discussed below). Meta similarly agrees not to seek from Consumer Plaintiffs any other written discovery—aside from responses to Interrogatories No. 3-4—from Consumer Plaintiffs regarding Consumer Plaintiffs for any of the April 15, 2022 Additional Online Services.

2. Meta agrees that absent a showing of good cause, Meta will not seek from Consumer Plaintiffs any discovery, with the exception of depositions of Consumer Plaintiffs, regarding any additional online services beyond the December 17, 2021 Online Services, or beyond the April 15, 2022 Additional Online Services. Meta reserves all rights to question Consumer Plaintiffs at any deposition regarding any appropriate subject, including any additional online service, and does not waive by virtue of this stipulation any scope of questioning. Consumer Plaintiffs reserve their rights

1 related to any deposition of them, and do not waive—by virtue of this stipulation—Consumer
2 Plaintiffs’ objections at deposition, including related to any questioning by Meta regarding any
3 online services.

4 3. For any online services that comprise the December 17, 2021 Online Services and
5 the April 15, 2022 Additional Online Services, which Meta has already served or does in the future
6 serve with subpoenas that seek documents or information regarding any of Consumer Plaintiffs,
7 Meta agrees not to seek documents or information from those nonparty online services regarding
8 Consumer Plaintiffs beyond battery reports, screen time reports, time spent and app usage data
9 (including but not limited to login frequency, and documents sufficient to show the functionalities
10 the Consumer Plaintiffs use and for how long, with respect to each functionality), and documents
11 showing applicable privacy settings and privacy policies for Consumer Plaintiffs’ accounts, if any.
12 For the avoidance of doubt, Meta will not seek any substantive content regarding Consumer
13 Plaintiffs from any non-party. Meta otherwise reserves its rights as to any nonparty subpoena that
14 it may serve in the future to any online service beyond the online services that comprise the
15 December 17, 2021 Online Services and the April 15, 2022 Additional Online Services. Consumer
16 Plaintiffs reserve their rights and objections regarding any nonparty subpoena to any online service
17 that Meta may serve in the future, including any nonparty beyond the online services that comprise
18 the December 17, 2021 Online Services and the April 15, 2022 Additional Online Services.

19 4. For the avoidance of doubt, to the extent that a Consumer Plaintiff has responsive
20 documents or electronically stored information maintained through Microsoft Outlook or one of the
21 December 17, 2021 Online Services, the parties’ stipulation does not exempt Consumer Plaintiffs
22 from their discovery obligations pursuant to discovery requests, consistent with the parties’
23 currently-agreed upon ESI Protocol and any future ESI order that the Court may enter.

24 5. Consumer Plaintiffs and Meta have resolved the discovery disputes raised in the
25 following discovery letter briefs: Dkt. 230 (Meta’s interrogatories); Dkt. 249 (Consumer Plaintiffs’
26 request to quash or modify certain of Meta’s nonparty subpoenas); and Dkt. 254 (the definition of
27 “online services” for Meta’s document requests to Consumer Plaintiffs).

28

1 6. Consumer Plaintiffs will—based on the information currently available to them, and
2 subject to supplementation pursuant to Fed. R. Civ. P. 26(e)—respond to Meta’s Interrogatories No.
3 1-2 by April 29, 2022. Consumer Plaintiffs will respond to Meta’s Interrogatories No. 3-4 by June
4 15, 2022.

5 7. Meta will, within three business days of this filing, provide a copy of this stipulation
6 to all nonparties it has subpoenaed for documents or information regarding Consumer Plaintiffs.
7 Meta will also provide a copy of this stipulation to any nonparty to whom it may, in the future, issue
8 a subpoena that seeks documents or information regarding Consumer Plaintiffs; Meta will do so
9 within 3 business days of service of any such subpoena.

1 DATED: April 19, 2022

Respectfully submitted,

2 By: /s/ Shana E. Scarlett

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1 **ATTESTATION OF STEPHEN A. SWEDLOW**

2 This document is being filed through the Electronic Case Filing (ECF) system by attorney
3 Stephen A. Swedlow. By his signature, Mr. Swedlow attests that he has obtained concurrence in
4 the filing of this document from each of the attorneys identified on the caption page and in the above
5 signature block.

6 Dated: April 19, 2022

By /s/ Stephen A. Swedlow

Stephen A. Swedlow

8
9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on this 19th day of April 2022, I electronically transmitted the foregoing
12 document to the Clerk's Office using the CM/ECF System, causing the document to be
13 electronically served on all attorneys of record.

14
15 By /s/ Stephen A. Swedlow

Stephen A. Swedlow